



ERS CONSULTANTS, INC.

ENVIRONMENTAL RESOURCE SPECIALISTS

September 8, 2005

Joseph Rones, Esq
Finkelstein & Partners
436 Robinson Avenue
Newburgh, New York 12550

APPLICANT: Shadowfax Run Development
TOWN: New Windsor
COUNTY: Orange **STATE:** New York
TAX LOT: Section 54, Block 1, Lot 44.2

RE: ACOE Wetland Permit Within The 100-Year Floodplain

Dear Mr. Rones:

ERS Consultants, Inc. is familiar with the above referenced property, having conducted a wetlands delineation on behalf of the Applicant in accordance with the US Army Corps of Engineers guidelines. The Applicant's engineer, MJS Engineering, of Goshen, New York, has prepared a subdivision sketch plan which indicates proposed impacts to federal regulated wetlands. The purpose of this letter is to inform you of the current US Department of the Army Corps of Engineers (ACOE) regulations, as they pertain to wetlands within floodplains.

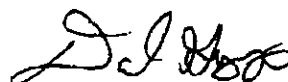
As stated above, the extent of Waters of the US contained within the site in question are subject to ACOE jurisdiction under section 404 of the Clean Water Act. Proposed impacts to Waters of the US, which includes wetlands, for the subject site would be addressed under the Nationwide Permits Program, Permit No. 39, Residential, Commercial and Institutional Developments. Under this program the Applicant must meet all general Nationwide Permit requirements, specific Nationwide Permit requirements, as well as regional requirements. One of the conditions for permit approval identified within the Federal Register, Volume 67, Reg. 2020, Page 2093, No. 10 (dated January 15, 2002) under specific Nationwide Permit General Conditions states that "fills within 100-year floodplains...are not authorized by Nationwide Permit No. 39...".

In a recent telephone conversation with Brian Orzel, the ACOE representative with the New York District that would be reviewing the project, Mr. Orzel stated unequivocally the Project would not be permitted to impact wetlands/waters of the US within floodplains under the Nationwide Permit Program. One can only apply for an Individual Permit. However, for every Individual Permit application, the ACOE must decide if the proposed project is water dependent. Typically, marinas are water dependent and houses are not water dependent. Therefore, the Corps would deny any Individual Permit. In addition, a less damaging (to wetlands) practicable alternative exists, in the form of a narrower wetland crossing for this project, requiring the ACOE to deny an Individual Permit.

Based on the information stated above, proposed access through the wetlands within the floodplain across from the Waugh residence is not an option for the applicant. Additionally, these wetlands are considered below headwaters and therefore impacts to these wetlands are not authorized by Nationwide Permit No. 39. The proposed access and associated impacts would be in violation of the Nationwide Permit Program and would not be permitted by the ACOE.

If you have any questions or if I can be of further assistance do not hesitate to contact us at (845) 987-1775.

Very truly yours,
ERS Consultants, Inc.



David Griggs
Professional Wetland Scientist